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Supreme Court of the United States

October Term, 1973

No. 73-1793

BURTON MARKS,

Petitioner,

vs.

HOUSTON I. FLOURNOY, individually and in his capacity as Controller of the State of California; J. K. BAILLIE, individually and in his capacity as President of Los Angeles Federal Savings and Loan Association,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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TOPICAL INDEX

Petition for Writ of Certiorari	Page
Opinions Below	2
Jurisdiction	2
Questions Presented	3
Statutes and Constitutional Provisions Involved	3
Statement of Facts	3
Reasons for Granting the Writ	4
Argument	5
I The District Court has erroneously refused to take jurisdiction over a matter which rests exclusively within its jurisdiction, and which is expressly mandated by Title 28 United States Code § 1343	5
II The District Court applied an erroneous standard in its dismissal of petitioner's complaint with prejudice	7
Conclusion	7
Index to Appendix	
Appendix A through C	

TABLE OF AUTHORITIES CITED

Cases	Page
Fuentes v. Shevin (1972), 407 U.S. 67	7
Hagans v. Lavine (1974), ... U.S. ....., 42 L. W. 4381	4, 7
Lynch v. Household Finance Corporation (1972), 405 U.S. 538	7
Scheuer v. Rhodes (1974), ... U.S. ....., 42 L. W. 4543	4, 6, 7
Sniadach v. Family Finance Corporation (1969), 395 U.S. 337	7
Steffel v. Thompson (1974), ... U.S. ....., 42 L. W. 4357	4, 7
United States Constitution	
Amendment XIV	3
United States Code	
28 U.S.C. 1254(1)	3
28 U.S.C. 1341	5, 6
28 U.S.C. 1343	3, 5
42 U.S.C. 1983	3, 4, 5, 6
42 U.S.C. 1985	3, 4, 5

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1973

No. .....

BURTON MARKS,

Petitioner,

vs.

HOUSTON I. FLOURNOY, individually and in his capacity as Controller of the State of California; **J. K. BAILLIE**, individually and in his capacity as President of Los Angeles Federal Savings and Loan Association,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

This is a petition of Burton Marks for a writ of certiorari to review the order made by the United States Court of Appeals for the Ninth Circuit on March 4, 1974, affirming the order dismissing petitioner's complaint which was entered by the United States District Court for the Central District of California on May 14, 1973.

OPINIONS BELOW

The order of the District Court dismissing petitioner's complaint with prejudice has not been published in any official reports. A copy of that order is attached hereto as Appendix A.

The memorandum opinion of the Court of Appeals for the Ninth Circuit, filed on March 4, 1974, and not to be published, is attached hereto as Appendix B.

JURISDICTION

1. On March 29, 1973, petitioner filed a complaint for damages for conspiracy to violate Civil Rights in the United States District Court for the Central District of California. Respondents filed a Notice of Motion to Dismiss petitioner's complaint on April 16, 1973.

2. On May 7, 1973, a hearing was held on respondents' Motion to Dismiss, and at the conclusion thereof petitioner's complaint was dismissed with prejudice.

3. The District Court's order of dismissal was entered on May 14, 1973, said order being based on the lack of jurisdiction of the subject matter by the Court and the applicability of the abstention doctrine. A timely notice of appeal was filed on May 16, 1973.

4. On March 4, 1974, the United States Court of Appeals for the Ninth Circuit affirmed the order of the District Court dismissing petitioner's complaint with prejudice.

5. On March 29, 1974, the Court of Appeals for the Ninth Circuit granted petitioner's application for a Stay of

Mandate until April 15, 1974.

6. The jurisdiction of this Court is invoked under Title 28 United States Code § 1254(1).

QUESTIONS PRESENTED

1. Whether the District Court may properly refuse to take jurisdiction over a matter which rests exclusively within its jurisdiction, and which is expressly mandated by Title 28 United States Code § 1343(1), (3).

2. Whether the District Court applied an erroneous standard in its dismissal of petitioner's complaint with prejudice.

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

The relevant statutory and constitutional provisions are set forth in Appendix C; they are 42 U.S.C. §§ 1983 and 1985, 28 U.S.C. § 1343(1), (3), and the Fourteenth Amendment to the United States Constitution.

STATEMENT OF FACTS

On August 18, 1972, petitioner, Burton Marks, opened a savings account with a branch office of the Los Angeles Federal Savings & Loan Association in Los Angeles, California. The sum of $20,000.00 was deposited in the account, which was held in joint tenancy with petitioner's mother.

On March 8, 1973, petitioner attempted to withdraw

all of his money, including accrued interest, which then came to the approximate sum of $20,311.00. Petitioner was prevented from withdrawing said funds because of certain policies and practices in which respondents were then, and continue to be, engaged. These policies and practices operate in such fashion as to enable respondent Flournoy, as Controller for the State of California, to withhold the personal property (money) of persons having accounts in joint tenancy with deceased persons, in order to insure the payment of taxes. This is accomplished without having to assess the tax liability of the joint tenancy, without the necessity of obtaining court orders for attachment and/or the issuance of any process, either administrative or judicial, and without the necessity of obtaining search and/or seizure warrants. Additionally, while such personal property is being withheld by the concert of action of respondents, it is being used by respondents to further their own personal, pecuniary gain.

REASONS FOR GRANTING THE WRIT

Petitioner requests that this Court review the decision of the United States Court of Appeals for the Ninth Circuit affirming the judgment of the United States District Court, Central District of California, because recent decisions of this Court indicate that the maintenance of petitioner's suit is not only proper but falls clearly within the purview and the import of Title 42 United States Code §§ 1983 and 1985. Petitioner respectfully cites to this Court its decisions in *Hagans v. Lavine* (1974), ... U.S. ....., 42 L. W. 4381; *Steffel v. Thompson* (1974), ... U.S. ....., 42 L. W. 4357;

and *Scheuer v. Rhodes* (1974) ..... U.S. ..... , 42 L. W. 4543. (Supreme Court Docket Nos. 72-914 and 72-1318.)

ARGUMENT

I

The District Court Has Erroneously Refused To Take Jurisdiction Over A Matter Which Rests Exclusively Within Its Jurisdiction, And Which Is Expressly Mandated By Title 28 United States Code § 1343.

Petitioner's complaint alleges a conspiracy to violate his Civil Rights, and he has sought redress pursuant to Title 42 United States Code §§ 1983 and 1985, along with their jurisdictional counterpart, Title 28 United States Code § 1343. The District Court dismissed the complaint with prejudice, basing said dismissal on Title 28 United States Code § 1341 and the so-called "abstention doctrine" applied by federal courts with respect to State tax matters. And it is this section and the abstention doctrine which go to the very heart of the matter in controversy.

Petitioner's claim does not concern itself with § 1341 of Title 28, or the abstention doctrine, which is the body of case law that has been developed around that section. Petitioner does not seek to have the District Court "enjoin, suspend or restrain the assessment, levy or collection of any tax under State law . . . . " Petitioner does seek to prevent, by way of an award for damages, the conspiracy entered into between the two respondents named herein (defendants below) to violate petitioner's Civil Rights by

depriving him of his property without due process of law. Contrary to all of respondents' arguments below, both in the District Court and in the Ninth Circuit, petitioner is not attacking the scheme of the State of California for the collection of inheritance taxes. There is a distinction between interfering with the process of collection of State taxes themselves and the actions of State tax collectors who interfere with and violate the constitutional rights of taxpayers. And while such distinction may be highly esoteric and beyond the grasp of respondents, it is certainly not beyond the grasp of this Honorable Court and is clearly a distinction which does exist. The fact of this distinction thus makes § 1341 of Title 28 inapplicable to the instant action, and it thereby does not act as a bar to petitioner's complaint.

The District Court and the Court of Appeals have adopted the contention set forth by the respondents, that collectors are somehow immune from all civil liability. This doctrine of absolute executive immunity has been set to rest by this Court in *Scheuer v. Rhodes,* ..... U.S. ..... , 42 L. W. 4543 (1974).

Section 1983 was designed to provide a specific remedy for the violation of Civil Rights done under color of State law. While petitioner is well aware that this section has been invoked in the past in an effort to circumvent the jurisdictional limitation of § 1341, and such invocation has consistently been rejected, petitioner's case is different and distinct from those other cases. As a result of the actions of the respondents, petitioner is being denied the right to access and use of monies belonging to him, without a prior adversary hearing, in violation

of the principles set forth in *Fuentes v. Shevin* (1972), 407 U.S. 67; *Lynch v. Household Finance Corporation* (1972), 405 U.S. 538; and *Sniadach v. Family Finance Corporation* (1969), 395 U.S. 337.

II

The District Court Applied An Erroneous Standard In Its Dismissal Of Petitioner's Complaint With Prejudice.

The District Court based its dismissal on the lack of subject matter jurisdiction and the applicability of the federal "abstention doctrine." The Court of Appeals has determined, inexplicably, that a Civil Rights lawsuit is a subterfuge for attempting to enjoin the collection of a State tax, which injunction is prohibited by federal statutory law. Petitioner herein submits that the rulings of both courts below ere erroneous and ill-considered in light of this Court's recent decisions in *Hagans v. Lavine* (1974), ... U.S. ..... , 42 L. W. 4381; *Steffel v. Thompson* (1974), ... U.S. ..... , 42 L. W. 4357; and *Scheuer v. Rhodes* (1974), ... U.S. ..... , 42 L. W. 4543.

CONCLUSION

If the questions here presented are not new and novel, then they have been decided adversely to the contentions of respondents. Petitioner respectfully submits that this Court grant his petition for writ of certiorari or, in the alternative, that this case be summarily remanded to the Court of Appeals for the Ninth Circuit for reconsideration

in light of the cases decided by this Court in its October 1973 term.

Respectfully submitted,

BURTON MARKS*

*RICHARD L. SOLOMON, a law student certified under the rules of the State Bar of the State of California, has assisted in the preparation of this petition.

INDEX TO APPENDIX

Page

Appendix A
Order of the United States District Court, Central District of California, filed May 14, 1973 1

Appendix B
Order Affirming, filed March 4, 1974, by the United States Court of Appeals, for the Ninth Circuit 2

Appendix C
Statutes and Constitutional provisions involved 3
42 U.S.C. § 1983
42 U.S.C. § 1985
28 U.S.C. § 1343
U. S. Constitution, Amend. XIV

APPENDIX A

ORDER
Filed May 14, 1973

[Prepared by Myron Siedorf, Walter H. Miller, James R. Birnberg, 107 South Broadway, Room 6125, Los Angeles, California 90012 - Telephone: 620-4707. Attorneys for Defendant, Houston I. Flournoy.]

United States District Court, Central District of California.

No. 73-683-MML.

BURTON MARKS, Plaintiff, vs. HOUSTON I. FLOURNOY, individually and in his capacity as Controller of the State of California; J. K. BAILLIE, individually and in his capacity as President of Los Angeles Federal Savings and Loan Association, Defendants.

This cause came on for hearing on May 7, 1973, on the motion of defendants, Houston I. Flournoy, individually, and Houston I. Flournoy, in his capacity as Controller of the State of California, to dismiss the action herein on various grounds, including the lack of jurisdiction of the subject matter by the court on the ground that 28 U.S.C. § 1341 and the abstention doctrine are applicable, requiring the non-intervention with state tax collection procedure, and the court having heard the arguments of counsel and being fully advised, and thereafter having ruled that the abstention doctrine was applicable herein, it is

ORDERED, ADJUDGED AND DECREED that the motion be and the same is granted and the complaint

dismissed with prejudice.

DATED: 5/14/73.

MALCOLM M. LUCAS
United States District Judge.

APPENDIX B

ORDER AFFIRMING
Filed March 4, 1974

"DO NOT PUBLISH"

United States Court of Appeals, for the Ninth Circuit.
No. 73-2141.

BURTON MARKS, Plaintiff-Appellant, vs. HOUSTON I. FLOURNOY, individually, and in his capacity as Controller of the State of California; J. K. BAILLIE, individually, and in his capacity as President of the Los Angeles Federal Savings and Loan Association, Defendants-Appellees.

Appeal from the United States District Court
for the Central District of California

Before: CHAMBERS, KOELSCH and ELY, Circuit Judges.

PER CURIAM:

The order of the district court dismissing the complaint

is affirmed.

Marks has attacked a state tax law and he is incorrect when he says he didn't.

Abstention was proper. Cf. *Bland v. McHann*, 463 F.2d 21 (2d Cir. 1972).

APPENDIX C

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

42 U.S.C. § 1983.

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

42 U.S.C. § 1985.

(3) If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities

under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators.

28 U.S.C. § 1343.

The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42;

(2) . . . .

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiciton of the United States; . . . .

United States Constitution
Amendment XIV.

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATE OF CALIFORNIA)
) ss.
County of Orange)

I, the undersigned, say: I am and was at all times herein mentioned, a citizen of the United States and employed in the County of Orange, State of California, over the age of eighteen years and not a party to the within action or proceeding; that

My business address is 326½ Main Street, Huntington Beach, California 92648, that on MAY , 1974, I served the within PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT (Marks v. Flournoy) on the following named parties by depositing the designated copies thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Post Office in the City of Huntington Beach, California, addressed to said parties at the addresses as follows:

Solicitor General of the United States
U. S. Department of Justice
Washington, D. C. 20530 (3 copies)

Messrs. Myron Siedof, Walter H. Miller,
and James R. Birnberg
107 South Broadway, Room 6125
Los Angeles, California 90012 (2 copies)

J. K. Baillie, President
Los Angeles Federal Savings & Laon Association
630 South Grand Avenue
Los Angeles, California 90017 (2 copies)

I declare under penalty that the foregoing is true and correct.

Executed on MAY , 1974, at HUNTINGTON BEACH, CALIFORNIA

D. A. Standefer

Dean-Standefer, 326½ Main St., Huntington Beach, Ca.
(714) 536-7161

IN THE SUPREME COURT OF THE UNITED STATES

October Term 1973

No. 73-1793

BURTON MARKS,

Petitioner,

vs.

HOUSTON I. FLOURNOY, individually and in his capacity as Controller of the State of California, J. K. BAILLIE, individually and in his capacity as President of Los Angeles Federal Savings and Loan Association,

Respondents.

BRIEF OF RESPONDENTS FLOURNOY IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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TOPICAL INDEX

		Page
Table of Authorities		ii
STATEMENT OF THE CASE		1
PRELIMINARY ASPECTS		2
REASONS FOR DENYING THE WRIT		4
I	THERE IS NO CONFLICT WITH THE DECISIONS OF THIS COURT	4
II	THERE IS NO CONFLICT AMONG THE VARIOUS CIRCUITS WHEREIN THE QUESTION OF ABSTENTION HAS BEEN CONSIDERED	8
CONCLUSION		9
APPENDIX A		

TABLE OF AUTHORITIES

Cases	Page
Alexander v. "Americans United," Inc., ___ U.S. ___, 42 U.S.L.R. 4711 (1974)	6
American Commuters Ass'n. v. Levitt, 405 F.2d 1148 (2d Cir. 1969)	8
Ammex Warehouse Co., Inc. v. Gallman, 414 U.S. 862, 94 S.Ct. 163, 39 L.Ed.2d 39 (1973 memo)	6
Bland v. McHann, 463 F.2d 21 (2d Cir. 1972) cert. den. 410 U.S. 966, 93 S.Ct. 1438, 35 L.Ed.2d 700	6, 7 8, 9
Board of Regents of State College v. Roth, 408 U.S. 564, 92 S.Ct. 2701 (1972)	7
Bob Jones University v. Simon, ___ U.S. ___, 42 U.S.L.W. 4721 (1974)	6
Boddie v. Connecticut, 401 U.S. 371, 91 S.Ct. 780, 28 L.Ed.2d 113 (1971)	7

Fuentes v. Shevin,
407 U.S. 67, 92 S.Ct. 1983,
32 L.Ed.2d 556 (1972) 7

Great Lakes Co. v. Huffman,
319 U.S. 293 (1943) 5, 6

Hagans v. Lavine,
___ U.S. ___, 94 S.Ct. 1372,
39 L.Ed.2d 577, 42 U.S.L.W. 438
(1974) 4

Hickman v. Wujick,
488 F.2d 875 (2d Cir. 1973) 8

Lynch v. Household Finance Corporation,
405 U.S. 538, 92 S.Ct. 1113 (1972) 7

Matthews v. Rogers,
284 U.S. 521, 52 S.Ct. 217,
76 L.Ed. 447 (1932) 7

Mitchell v. W. T. Grant Co.,
___ U.S. ___, 42 U.S.L.W. 4671
(1974) 7

Perez v. Ledesma,
401 U.S. 82, 91 S.Ct. 674,
27 L.Ed.2d 697 (1971) 7

Phillips v. Commissioner,
283 U.S. 589, 51 S.Ct. 608,
73 L.Ed. 1289 (1931) 7

Samuels v. Mackell,
401 U.S. 66, 91 S.Ct. 764,
27 L.Ed.2d 658 (1971) 5

Scheuer v. Rhodes,
___ U.S. ___, 94 S.Ct. 1683,
40 L.Ed.2d 90, 42 U.S.L.W. 4543
(1974) 4

Steffel v. Thompson,
___ U.S. ___, 94 S.Ct. 505,
39 L.Ed.2d 1209, 42 U.S.L.W. 4357
(1974) 4, 5

United States v. State Tax Commissioner,
481 F.2d 963 (1st Cir. 1973) 8

Walker v. Gilligan,
487 F.2d 508 (6th Cir. 1973) 8

Statutes

California Revenue and Taxation Code
Sections 14301, 14308, 14341,
14345 and 14348 3

28 U.S.C. §1341 2, 3, 4
5, 6, 8

IN THE
SUPREME COURT
OF THE UNITED STATES
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BURTON MARKS,

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vs.

HOUSTON I. FLOURNOY, individually and in his capacity as Controller of the State of California, J. K. BAILLIE, individually and in his capacity as President of Los Angeles Federal Savings and Loan Association,

Respondents.

BRIEF OF RESPONDENTS FLOURNOY IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

STATEMENT OF THE CASE

This case involves the applicability of the doctrine of federal court abstention from

hearing cases involving state tax collection procedures where there is a plain, speedy and efficient remedy at law in the state courts.

The gravamen of the complaint is that plaintiff-petitioner's civil rights were infringed upon by virtue of the fact that under the California Inheritance Tax Law certain restraints are placed upon withdrawal of funds by the survivor to a joint tenancy bank account. (See, Appellees' Brief (Flournoy), p. 2.)

Petitioner's statement of Jurisdiction (Petition for Writ, p. 2) adequately sets forth the chronological sequence of events leading to his petition to this Court. In each instance the question is presented in terms of the jurisdiction of the District Court to hear the complaint.

A summary of respondents' position below is found in the brief filed with the Court of Appeals (Appellees' Brief, pp. 4-5).

PRELIMINARY ASPECTS

The statement of the Questions Presented and of the Statutes and Constitutional Provisions Involved as recited by petitioner (Petition for Writ, p. 3) fails to refer to or cite 28 U.S.C. §1341, which was relied upon by the District Court in its order and likewise fails to mention that the basic

issue is the application of the doctrine of federal court abstention from interfering with state tax collection procedures which was the basis for both the District Court and the Court of Appeals decisions. (The text of 28 U.S.C. §1341 is set forth in Appendix "A".)

Petitioner's Statement of Fact (Petition for Writ, pp. 3-4) fails to recite that the "policies and practices" alluded to are authorized by Sections 14301, 14308, 14341, 14345 and 14348, California Revenue and Taxation Code (set forth in Appendix "A"), as part of a comprehensive scheme for securing the reporting of assets transferred and for assessment and collection of California Inheritance Tax which may be due on such transferred assets. Petitioner's Statement likewise fails to indicate and the record below demonstrates that no showing nor even an offer of proof was made by petitioner that there is no plain, speedy or efficient remedy at law in the courts of the State of California.

REASONS FOR DENYING THE WRIT

I

THERE IS NO CONFLICT WITH THE DECISIONS OF THIS COURT

Petitioner's brief merely recites the same arguments used unsuccessfully by him in the courts below, but to invite this Court's attention he cites three new cases decided by this Court, all of which are both factually and legally distinguishable from this case, and one of which, Steffel v. Thompson, ___ U.S. ___, 94 S.Ct. 1209, 39 L.Ed.2d 505, 42 U.S.L.W. 4357 (1974) suggests that this Court clearly approves of the conceptual and statutory bases for abstention in the area of state tax collections.

Scheuer v. Rhodes, ___ U.S. ___, 94 S.Ct. 1683, 40 L.Ed.2d 90, 42 U.S.L.W. 4543 (1974) involved the claim of executive immunity from tort liability, and Hagans v. Lavine, ___ U.S. ___, 94 S.Ct. 1372, 39 L.Ed.2d 577, 42 U.S.L.W. 438 (1974) dealt with procedural aspects of the administration of the Aid to Families with Dependent Children program in New York. Nowhere in either of these cases is the question of state tax lien laws mentioned nor do they discuss or even cite 28 U.S.C. §1341 or the abstention doctrine.

In Steffel v. Thompson, ___ U.S. ___, 94 S.Ct. 1209, 39 L.Ed. 505, 42 U.S.L.W. 4357, this Court sustained the jurisdiction of the federal courts to entertain suits for declaratory relief against anticipated prosecutions, where there was no pending state criminal proceeding. In discussing the scope of the policies considered, this Court mentions the reasoning behind the denial of federal jurisdiction in certain areas:

> "The only cases where this Court has disregarded the 'different considerations' and found that a preclusion or injunctive relief inevitably led to a denial by declaratory relief have been cases in which principles of federalism militated altogether against federal intervention into a class of adjudications. (See Great Lakes Co. v. Huffman, 319 U.S. 293 (1943) (federal policy against interfering with the enforcement of state tax laws) . . . ."
> ___ U.S. ___. 94 S.Ct. 1209 at 1222, 39 L.Ed. 505, 522.

In the footnote following this quotation this Court discusses the Great Lakes case and cites 28 U.S.C. §1341 (___ U.S. ___, 39 L.Ed. 505, 552, fn. 20). Also see, Samuels v. Mackell, 401 U.S. 66, 91 S. Ct. 764, 27 L.Ed.2d 658 (1971).

In Bland v. McHann, 463 F.2d 21 (2d Cir. 1972) cert. den. 410 U.S. 966, 93 S.Ct. 1438, 35 L.Ed.2d 700, the Court of Appeals relies primarily upon the Great Lakes case in sustaining the dismissal of suits in federal courts which directly or indirectly attempt to interfere with state tax collection procedures.

This Court has affirmed, in one reported case, that 28 U.S.C. §1341 requires dismissal of a suit for declaratory judgment, even where the constitutional challenge appears to be meritorious, where the state court procedure appears to provide a plain, speedy and efficient remedy. Ammex Warehouse Co., Inc. v. Gallman, 414 U.S. 862, 94 S.Ct. 163, 39 L.Ed.2d 39 (1973 memo).

Petitioner's suggestion that his suit for damages does not "enjoin, suspend or restrain assessment, collection of any tax under state law," is spurious, since to sustain his claim for relief would require a holding that the inheritance tax lien procedures are invalid, which in itself would interfere with the entire process of reporting and jeopardize the security for payment of California inheritance taxes. Petitioner's argument is quite similar to those which were rejected by this Court in Bob Jones University v. Simon, ___ U.S. ___, 42 U.S.L.W. 4721 at 4725 (1974) and Alexander v. "Americans United," Inc., ___ U.S. ___, 42 U.S.L.W. 4711 at 4714 (1974), where

taxpayers tried unsuccessfully to circumvent a similar statutory preclusion in the Internal Revenue Code. Also see, Bland v. McHann, supra, at 25-28 citing Matthews v. Rogers, 284 U.S. 521, 52 S.Ct. 217, 76 L.Ed. 447 (1932).

The three cases cited by Petitioner regarding his alleged constitutional rights (Petition for Writ, p. 7) are inapplicable for the reasons suggested in several opinions by this Court, all of which rely upon Phillips v. Commissioner, 283 U.S. 589, 51 S.Ct. 608, 73 L.Ed. 1289 (1931), which was relied upon in Mitchell v. W. T. Grant Co., ___ U.S. ___, 42 U.S.L.W. 4671, 4675 (1974). See, Perez v. Ledesma, 401 U.S. 82, 126-127, n. 17, 91 S.Ct. 674, 678, 27 L.Ed.2d 697-698, 701 (1971, Brennan, J. concurring); Lynch v. Household Finance Corporation, 405 U.S. 538, 542-543, n. 6, 92 S.Ct. 1113 at 1117, n. 6 (1972); Fuentes v. Shevin, 407 U.S. 67, 91-92, n. 24, 92 S.Ct. 1983, 1991-2000, n. 24, 32 L.Ed.2d 556, 576, n. 24 (1972); also see comments of this Court in Boddie v. Connecticut, 401 U.S. 371 at 378-379, 91 S.Ct. 780, 786-787, 28 L.Ed.2d 113, 119-20 (1971); Board of Regents of State College v. Roth, 408 U.S. 564, 570, n. 7, 92 S.Ct. 2701, 2705 (1972).

II

THERE IS NO CONFLICT AMONG THE VARIOUS CIRCUITS WHEREIN THE QUESTION OF ABSTENTION HAS BEEN CONSIDERED

In each of the following decisions by the Court of Appeals, the abstention doctrine and 28 U.S.C. §1341 have been applied in the absence of a showing of a lack of a plain, speedy and efficient remedy in state court:

American Commuters Ass'n. v. Levitt,
405 F.2d 1148 (2d Cir. 1969);

Hickman v. Wujick,
488 F.2d 875 (2d Cir. 1973);

Walker v. Gilligan,
487 F.2d 508 (6th Cir. 1973);

United States v. State Tax Commissioner,
481 F.2d 963, at 972-74
(1st Cir. 1973);

Bland v. McHann,
463 F.2d 21 (5th Cir. 1972)
cert. den. 410 U.S. 966,
93 S.Ct. 1438, 35 L.Ed.2d 700
(1973).

It is appropriate that the Court of Appeals decision herein relies upon Bland v. McHann,

supra, since that opinion contains the most complete analysis of the abstention doctrine, as to both its statutory and its caselaw bases. Petitioner's brief in no way considers or attempts to contrast Bland or to discuss the abstention doctrine at all, even though the decisions of the District Court and the Court of Appeals were directed specifically to this point.

CONCLUSION

As was suggested below, the restraint placed upon petitioner's access to the joint tenancy account is due to the enforcement and collection procedures under the California Inheritance Tax Law. The complaint filed herein challenges the validity of the state tax collection procedure, and since there was no showing of a lack of plain, speedy and efficient remedy in the courts of the State of California, the suit was properly dismissed by the trial court.

Petitioner's brief has advanced no reason which would bring this case outside of the rule of federal court abstention, and in fact one of his cited authorities lends support to the correctness of the District Court and Court of Appeals decisions.

It is respectfully submitted that this Court should deny the writ of certiorari.

Respectfully submitted,

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APPENDIX A

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

28 U.S.C. §1341.

The district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State Law where a plain, speedy and efficient remedy may be had in the courts of such State.

§14301, California Revenue and Taxation Code.

Every tax imposed by this part, together with any interest on the tax, is a lien upon the property included in the transfer on which the tax is imposed. Except as otherwise provided in this chapter, the lien remains until the tax and interest are paid in full.

§14308, California Revenue and Taxation Code.

The Controller, the inheritance tax attorney or a subordinate inheritance tax attorney may at any time release all or any portion of the real property subject to any lien imposed by this part from such lien or subordinate such lien to other liens and encumbrances if he determines that the taxes are sufficiently secured by a lien on other property belonging to the decedent at the time

of his death or that the release or subordination of such lien will not endanger or jeopardize the collection of said taxes.

A certificate by the Controller, the inheritance tax attorney, or a subordinate inheritance tax attorney to the effect that real property subject to any lien imposed by this part has been released from such lien or that the lien imposed by this part on any property or interest therein has been released or subordinated to other liens as in this section provided shall be conclusive evidence as to any bona fide purchaser, encumbrancer or lessee that such lien has been subordinated as set forth in the certificate.

§14341, California Revenue and Taxation Code.

Unless the written consent of the Controller, or of a person authorized in writing by the Controller to issue the consent, is first secured, no corporation organized or existing under the laws of this State shall transfer on its books or issue a new certificate for any share of its capital stock belonging to or standing in the name of a decedent, belonging to or standing in the joint names of a decedent and one or more other persons, or held in trust for a decedent.

§14345, California Revenue and Taxation Code.

No safe deposit company, trust company, corporation, bank, other institution, or person in possession, control, custody, partial control, or partial custody of any securities, deposits, or other property, including shares of the capital stock of or other interest in any such organization or institution, belonging to or standing in the name of a decedent, whether resident or non-resident, shall deliver or transfer any such property to or upon the order or request of any executor of the will, administrator of the estate, legatee or heir of the decedent; nor deliver or transfer any such property to or upon the order of any agent, deputy, attorney, trustee or successor in interest of the decedent after receipt of actual notice of the death of decedent; nor deliver or transfer any securities or other property, including any shares of the capital stock or other interest in any such organization or institution, standing in the joint names of the decedent and one or more other persons, to or upon the order or request of such other person or persons after receipt of actual notice of the death of the decedent; and no bank or other institution having custody of any deposit standing in the joint names of a decedent and any other person or persons or standing in the name of the decedent subject to the right of any other person or persons to draw upon or withdraw the same shall pay or deliver such deposit to or upon the order of such other person or persons after receipt of actual notice

of the death of the decedent by the officer or manager in charge of the office or branch of such bank or other institution at which such deposit is carried or by the employee thereof who pays or delivers said deposit:

(a) Without retaining a sufficient portion or amount of the property to pay any tax and interest which may thereafter be assessed pursuant to this part; and

(b) Without first giving notice of the time and place of the delivery or transfer to the Controller and county treasurer at least 10 days prior to the delivery or transfer.

The Controller, or any person authorized in writing by the Controller, may consent in writing to the delivery or transfer, in which event compliance with this section is not required.

The Controller or his authorized agent may examine any property specified in this section at the time of its delivery or at any other time.

§14348, California Revenue and Taxation Code.

When in the opinion of the Controller, collection of the tax imposed by this part will not thereby be jeopardized, he may in such classes of cases as he shall determine, and subject to such conditions as he shall impose,

issue general consents or dispense with the requirements of this article that his written consent be obtained prior to the delivery or transfer of stocks, securities, accounts, deposits or other property belonging to or standing in the name of a decedent.